



AMERICAN TELEMARKETING ASSOCIATION, INC.

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May 22, 1992

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Office of the Secretary
Federal Communications Commission
1919 M Street, N W
Washington, D C 20554

MAY 26 1992

FCC MAIL BRANCH

Subject: CC Docket No. 92-90.

Dear Mr. Chairman and Commissioners:

On behalf of the American Telemarketing Association (ATA), I am pleased to submit the following comments regarding S. 1462, the Telephone Consumer Protection Act of 1991 (TCPA) (P.L. 102-234) and the Notice of Proposed Rulemaking (NPRM) issued by the Federal Communications Commission (FCC) on April 17, 1992 (CC Docket No. 92-90).

This letter represents the first time that the American Telemarketing Association has had the occasion to respond to an FCC NPRM. While this is the official response vehicle for the ATA, we have encouraged our member companies to submit their individual responses directly to the Commission. In this way our member companies can address whatever segments of the NPRM are of specific interest and/or concern to their particular business. Many of our members have submitted formal responses addressing their companies' concerns.

The American Telemarketing Association is a not-for-profit trade association founded in 1983 to serve professionals who use the telephone for marketing, sales and/or service. Currently, the American Telemarketing Association represents approximately 1,000 telemarketing professionals, ranging from small businesses to large corporate entities. Membership includes- but is not necessarily limited to-the following industries: financial, insurance, retail, publishing, telecommunications, high tech, medical, pharmaceutical, transportation, and entertainment. Telemarketing service agencies, not for profit organizations, marketing research and customer service groups, consultants and other specialists in the telecommunications and telemarketing field are also ATA members.

Many of our members are also members of other trade associations such as the Direct Marketing Association, International Customer Service Association, National Association of Manufacturers and the Market Research Association. Members of these various groups have worked together since the introduction of this legislation and our responses to the NPRM share a basic commonality.

The American Telemarketing Association, in this response, will address three major areas of the NPRM:

- * ADRMPS (Automatic Dialing Recorded Message Players)
- * Do Not Call Solution
- * Established Business Relationships

ADRMPS

Throughout the NPRM the term autodialers is used for ADRMP equipment. The ATA believes that this terminology leads to confusion as an autodialer can be either part of ADRMP equipment or used to dial a number from which a live operator will conduct the call. How the call is placed is not relevant. The only relevant factor from the customer's perspective is whether a live operator or a prerecorded message is on the other end of the line. With this clarification in mind, the the ATA offers the following definition for ADRMPS:

Equipment used to dial the business or consumer public and play a recorded message. The numbers called are either preloaded, randomly dialed or sequentially dialed. By definition, the ADRMP call does NOT involve a live operator.

Under these definitions, the American Telemarketing Association supports the prohibition of the use of ADRMPS for sales and/or marketing calls to residential and business consumers. The ATA has consistently supported this position. Included with this letter is a copy of the ATA's Policy Statement regarding ADRMPS as well as the Standards & Ethics Guidelines.

"Do Not Call" Solution

The American Telemarketing Association supports the adoption of Company-Specific Do Not Call Suppression as the most economical and consumer-result oriented approach to addressing concerns about unwanted telephone solicitations. This approach would avoid the "all or nothing" concern and therefore protect consumer privacy while allowing desired solicitations. A Company-Specific Do Not Call list would avoid confidentiality problems and would not unduly burden businesses.

The ATA believes that the Company-Specific Do Not Call Suppression approach is the most feasible method of accomplishing the desired results with the least amount of financial hardship to all concerned.

Established Business Relationships (EBR)

The ATA recommends that established business relationships should be defined as current and previous customers who have conducted business with a company or its affiliates. Established business relationships should be exempted from automatic dialing recorded message player restrictions except when the call is of an explicit sales and/or marketing nature.

The TCPA provides an explicit exemption to the definition of "telephone solicitation" for live operator calls to any persons with whom the caller has an "established business relationship." The ATA believes that Congress intended for the definition of EBR to be broadly defined to allow companies maximum flexibility to market their products, but that the company's judgment in this regard must be reasonable and defensible.

The ATA would like to note, however, that if the Commission should select the Company-Specific Do Not Call list option, established business relationships would eventually become irrelevant when a consumer requests to appear on a do-not-call list.

To summarize, the American Telemarketing Association supports the prohibition of ADRMPS for sales and/or marketing related calls. Furthermore, it is our belief that no telemarketer should call someone who does not want to receive a telemarketing call. It is our hope that through this legislation and the Commission's review of comments, a balance will be achieved to assure consumer privacy and, at the same time, provide the consumer public with the option to take advantage of desired business opportunities over the telephone.

We are pleased to have this opportunity to submit these comments on the Telephone Consumer Protection Act of 1991 and hope our views will be helpful in the Commission's deliberations. If the ATA can be of assistance on these or other matters of interest, please feel free to contact us.

Sincerely,



Judy Lanier
National President

JL:atc

encls

ATA POSITION STATEMENT

AUTOMATIC DIALING RECORDED MESSAGE PLAYERS (ADRMPS)

Automatic Dialing Recorded Message Players (ADRMPS) are equipment used to dial telephone numbers and play recorded messages. The numbers called are either pre-loaded, randomly dialed, or sequentially dialed. By definition, there is no introduction by a live operator.

The American Telemarketing Association does not condone the use of ADRMPS for any sales or marketing function. A sales or marketing function can be defined as the use of the telephone for the following purposes:

- * Sales of a product or service
- * Lead generation/qualification
- * Appointment setting
- * Market research
- * Fundraising

The ATA recognizes that there are appropriate uses for ADRMP equipment such as:

- * Notification of:
 - * Emergency situations by public officials
 - * Order availability by catalog companies
 - * Student absenteeism by school officials
- * Confirmation of medical/dental appointments

Always check applicable laws to ensure compliance. Laws vary from state to state.